

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #5	CCRB Case #: 201503516	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/01/2015 2:26 PM	Location of Incident: Northwest corner of Montauk Avenue and Hegeman Avenue	Precinct: 75	18 Mo. SOL 11/1/2016	EO SOL 11/1/2016	
Date/Time CV Reported Mon, 05/04/2015 3:25 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/04/2015 3:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Steven Moylan	10184	956958	075 PCT
2. LT Vitaliy Zelikov	00000	936353	075 PCT
3. POM Michael Vitale	23951	954409	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.LT Vitaliy Zelikov	Abuse: Lt. Vitaliy Zelikov stopped § 87(2)(b)	
B.LT Vitaliy Zelikov	Force: Lt. Vitaliy Zelikov used a taser against § 87(2)(b)	
C.LT Vitaliy Zelikov	Force: Lt. Vitaliy Zelikov struck § 87(2)(b) with a baton.	
D.POM Steven Moylan	Force: PO Steven Moylan used physical force against § 87(2)(b)	
E.POM Steven Moylan	Force: PO Steven Moylan used physical force against § 87(2)(b)	
F.LT Vitaliy Zelikov	Discourtesy: Lt. Vitaliy Zelikov spoke discourteously to individuals.	
G.LT Vitaliy Zelikov	Force: Lt. Vitaliy Zelikov used physical force against § 87(2)(b)	
H.POM Michael Vitale	Force: PO Michael Vitale used physical force against § 87(2)(b)	

Case Summary

The following incident was captured on cell phone video (see Board Review #1) obtained from a witness, § 87(2)(b) who posted the footage on Facebook. At approximately 2:15 p.m. on May 1, 2015, § 87(2)(b) was stopped on the northwest corner of Hegemon Avenue and Montauk Avenue in Brooklyn by PO Steven Moylan and Lt. Vitaliy Zelikov, both from the 75th Precinct (**Allegation A**). Although he was initially stopped for riding his bicycle on the sidewalk, after further investigation the officers discovered that he had an open warrant, reportedly for an unpaid summons, and exited the vehicle to arrest him. As officers attempted to place him in handcuffs, § 87(2)(b) protested the arrest and walked away. As he did so, Lt. Zelikov fired a TASER into § 87(2)(b)'s back (**Allegation B**), though it had minimal effect on him. While PO Moylan grabbed § 87(2)(b) in a bear hug, Lt. Zelikov removed his baton and allegedly struck § 87(2)(b) on both shins at least once (**Allegation C**). Immediately thereafter, PO Moylan threw § 87(2)(b) to the ground so that he landed on his left hip (**Allegation D**). PO Moylan then mounted § 87(2)(b) on the ground and allegedly punched him on the side of his head one to two times using a closed fist (**Allegation E**). As Lt. Zelikov joined the struggle, he instructed unidentified members of a crowd that had formed to "Get the fuck back" (**Allegation F**). In order to assist PO Moylan, Lt. Zelikov then deployed the TASER against § 87(2)(b)'s back two more times (**subsumed with Allegation B**). Following this, Lt. Zelikov used one knee to press § 87(2)(b)'s head down against the ground, allegedly causing § 87(2)(b) extreme pain (**Allegation G**). § 87(2)(b) was subsequently handcuffed and escorted to a police van by PO Moylan and PO Michael Vitale of Patrol Borough Brooklyn North, who had just arrived on the scene to assist. As PO Vitale placed him into the back seat of the van, he allegedly punched § 87(2)(b) on the back of his right leg (**Allegation H**). § 87(2)(b) was transported to the 75th Precinct stationhouse where he was examined by EMS and removed to the hospital. § 87(2)(b) was ultimately charged with resisting arrest, operating a bicycle on the sidewalk, and disorderly conduct in the form of fighting or violent behavior.

Mediation, Civil and Criminal Histories

- § 87(2)(b)
- § 87(2)(b)
- As of June 9, 2015, no notice of claim has been filed with the City of New York regarding this incident (see Board Review #3).

Civilian and Officer CCRB Histories

- Lt. Zelikov has been a member of the NYPD for ten years and has been a subject in twelve prior CCRB cases involving thirty FADO allegations, among which only one allegation of an entry has been substantiated. Six physical force allegations have previously been pleaded against Lt. Zelikov, four of which were exonerated, one of which was unfounded, and one of which was unsubstantiated. No prior allegations involving the use of a TASER or force with a baton have been pleaded against Lt. Zelikov. Lt. Zelikov has two prior stop allegations, one of which was exonerated and the other unsubstantiated. There have been eight discourtesy allegations pleaded against Lt. Zelikov, two of which were exonerated, four of which were unsubstantiated, and two of which were unfounded. Among the cases either exonerated or

unsubstantiated, five involved the use of the word “fuck” and three were for the exact (“Get the fuck back”) or almost exact (“Step the fuck back”) same phrase alleged in this case.

- PO Moylan has been a member of the NYPD for one year and these are the first CCRB allegations against him.
- PO Vitale has been a member of the NYPD for two years and this is the first CCRB allegation against him.
- This is the first CCRB complaint involving § 87(2)(b) (see Board Review #4).

Potential Issues

§ 87(2)(b) who witnessed this incident from the crowd, scheduled in-person statements for May 14, 2015, and May 20, 2015, respectively. However, he failed to appear for either of those interviews without calling in advance to cancel or reschedule. Therefore, the investigation was unable to obtain a sworn statement from § 87(2)(b). Separately, as neither § 87(2)(b) nor § 87(2)(b) could identify any other civilians who were present in the crowd or whom Lt. Zelikov instructed to get back, **Allegation F** is pleaded against unidentified “individuals.”

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority:** Although Lt. Zelikov pointed his TASER at unidentified individuals in the crowd, he did so while telling them to get back, which is addressed in the discourtesy allegation below. As such, no threat of force allegation is pleaded.
- **Force:** § 87(2)(b) alleged that after § 87(2)(b) was seated in the back seat of the van, PO Vitale punched him in the face. However, § 87(2)(b) never made any such allegation, so no additional force is pleaded.

Allegation A—Abuse of Authority: Lt. Vitaliy Zelikov stopped § 87(2)(b)

§ 87(2)(b) (see Board Review #5) alleged that after mounting his bicycle on the sidewalk and pedaling one to two times directly off the sidewalk into the street, the officers stopped him and requested his identification for riding on the sidewalk. Although at the time § 87(2)(b) (see Board Review #6) was inside a nearby convenience store, the windows of which are obstructed (see Board Review #7), he stated that he observed § 87(2)(b) mount the bicycle and ride directly from the store entrance into the street.

Conversely, PO Moylan (see Board Review #8) stated that, as they approached the corner in their vehicle, he observed § 87(2)(b) riding fully on the sidewalk eastbound for a short distance near the corner. Lt. Zelikov (see Board Review #9) similarly stated that he observed § 87(2)(b) from almost one block away riding back and forth on the aforementioned corner sidewalk, which he saw as a potential hazard to pedestrians. Lt. Zelikov did not recall how many pedestrians were nearby or if § 87(2)(b) came close to any pedestrians while riding. Although Lt. Zelikov maintained that the original goal of the stop was to issue § 87(2)(b) a summons, PO Moylan explained that many civilians in the neighborhood have open warrants, so the officers stopped him to see if he had any such warrants. PO Moylan added that they may not have issued him a summons for the observed offense and that it depended on how the interaction unfolded.

§ 87(2)(b), § 87(2)(g)

Allegation B—Force: Lt. Vitaliy Zelikov used a taser against § 87(2)(b)

The circumstances surrounding Lt. Zelikov's use of a TASER against § 87(2)(b) are largely undisputed. After stopping him for a summonsable offense and discovering that he had an open warrant, the officers exited their car, notified him that he was under arrest, and instructed him to place his hands behind his back. As shown on the video footage recorded by § 87(2)(b), § 87(2)(b) disagreed with the arrest and walked away from the officers at an average walking speed. Lt. Zelikov attempted to stop him by grabbing his arm, but § 87(2)(b) pulled free and continued walking. Immediately thereafter, Lt. Zelikov fired his TASER into § 87(2)(b)'s back, though it had little effect, exhibited by the fact that he kept walking while telling the officers to leave him alone. PO Moylan then intercedes and takes § 87(2)(b) to the ground where they struggle for almost one full minute before the handcuffs can be secured. At two points during this struggle, Lt. Zelikov approaches and employs the TASER into § 87(2)(b)'s back using touch stun mode. During the first touch stun use, shown at <00:32> on the video, Lt. Zelikov places the gun against § 87(2)(b)'s back but does not maintain continuous contact and instead repeatedly moves the gun up and down. Although the second touch stun use, shown at <00:44> seconds, is not visible because PO Moylan's body obstructs the view, it appears to be more continuous based on Lt. Zelikov's stable movement and positioning.

Lt. Zelikov and PO Moylan both confirmed that at no point throughout the several minute interaction preceding the arrest did they have any reason to believe that § 87(2)(b) was in possession of a weapon or that he was under the influence of alcohol or narcotics. Lt. Zelikov maintained that after being told that he was under arrest but prior to the start of the video, § 87(2)(b) stated that he was not going with them, which prompted Lt. Zelikov to remove the TASER. Lt. Zelikov stated that § 87(2)(b) then used his hands to push off the car as well as off Lt. Zelikov's chest before walking away. PO Moylan confirmed that § 87(2)(b) pushed off the car and may have brushed against the officers, but maintained that the contact did not appear intentional or threatening in any way. Neither Lt. Zelikov nor PO Moylan described any threatening physical behavior prior to § 87(2)(b)'s flight. § 87(2)(b) stands 5'9" and weighs 190 pounds (see Board Review #10); Lt. Zelikov stands 6'0" and weighs 200 pounds (see Board Review #11); and PO Moylan stands 6'1" and weighs 260 pounds (see Board Review #12).

Lt. Zelikov explained that he first used the TASER because § 87(2)(b) verbalized his refusal to be arrested as well as walked away, both indications that it would be difficult to physically apprehend him. Lt. Zelikov added that § 87(2)(b) was facing away from him as he walked away, so he did not know if he had a concealed weapon that he could suddenly turn around and use against the officers. Upon seeing that the first use of the TASER was ineffective, Lt. Zelikov

suspected that § 87(2)(b) may be under the influence of some substance. As such, he maintained that the second use of the TASER in touch stun mode was used because the first was ineffective and because his partner's efforts to physically subdue him were also not working. Lt. Zelikov stated that the third use of the TASER was employed for the same reasons, namely that the first two had not worked and that PO Moylan was still struggling to overcome his resistance. Lt. Zelikov acknowledged that even the third use of the TASER was not effective in reducing § 87(2)(b)'s resistance, which is reflected in the 75th Precinct's TASER utilization report (see Board Review #13).

Upon examination at the hospital (Privileged Documents), § 87(2)(b) complained of back pain and it was noted that he presented with four TASER wounds as well as a foreign body in his skin, though he did not feel it. However, upon examination, it was noted that he had three puncture wounds on his back, which were photographed four days after the incident at the CCRB (see Board Review #14).

Officers are required to use the minimum force necessary when effecting an arrest. Patrol Guide Procedure 203-11 (see Board Review #15). The use of a conducted energy device, such as a TASER, should only be used against those who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or others present. Touch stun mode should only be used in exceptional circumstances and not as a primary method of use. Furthermore, when evaluating the minimum level of force necessary to overcome resistance, the following factors should be taken into consideration: officer/subject size disparity; officer/subject age disparity; officer/subject strength disparity; the officer's perception of the subject's willingness to resist; the officer's perception of the immediate threat to the subject; members of service, and bystanders; a suspect's violent history; the officer's location in a hostile environment; and the officer's perception of the subject being under the influence of any substance that would affect pain tolerance and/or violence. Patrol Guide Procedure 212-117 (see Board Review #16).

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C—Force: Lt. Vitaliy Zelikov struck § 87(2)(b) with a baton.

§ 87(2)(b) alleged that after Lt. Zelikov's failed attempt to TASER him, he removed his baton and struck § 87(2)(b) at least once on both shins. Conversely, § 87(2)(b) Lt. Zelikov, and PO Moylan were all consistent in that although Lt. Zelikov did remove his baton, he was unable to strike § 87(2)(b) before PO Moylan took him to the ground. This was confirmed by the video footage, which at <00:12> shows Lt. Zelikov removing his baton, winding it back in preparation to strike § 87(2)(b) but never making contact because § 87(2)(b) is taken to the ground.

§ 87(2)(b), § 87(2)(g)

Allegation D—Force: PO Steven Moylan used physical force against § 87(2)(b)

It is undisputed that after Lt. Zelikov's first failed attempt to subdue § 87(2)(b) using a TASER, PO Moylan threw him to the ground. Despite his denials of resistance, § 87(2)(b) acknowledged that he was trying to walk away from the officers prior to being taken to the ground and that TASER has little effect on him, as shown on the video footage. § 87(2)(b) stated that as a result of being thrown to the ground, he sustained scrapes to his left hip, which were photographed at the CCRB four days after the incident (see Board Review #17). However, medical records from the date of the incident made no mention of this hip injury being either alleged or observed.

Officers are required to use the minimum force necessary when effecting an arrest. Patrol Guide Procedure 203-11.

PO Moylan maintained that he took § 87(2)(b) to the ground because, despite having just been shot with a TASER, he continued to actively resist arrest by pulling his arms away and shifting his body. Although he did not know how § 87(2)(b) sustained the scrapes on his hip, which he had not seen prior to his CCRB interview, PO Moylan stated that they could easily have been the result of § 87(2)(b)'s own resistance while struggling on the ground.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E—Force: PO Steven Moylan used physical force against § 87(2)(b)

Allegation G—Force: Lt. Vitaliy Zelikov used physical force against § 87(2)(b)

In his initial complaint (see Board Review #18), § 87(2)(b) made no mention of being struck in the head or face, nor of any injury to his mouth or teeth. However, during his sworn statement, he alleged that after PO Moylan threw him to the ground and sat on top of him, he attempted to punch him in the head four to five times with a closed fist, though § 87(2)(b) shielded himself with his free hand so that only one or two blows made contact with the right side of his head over his ear. Furthermore, § 87(2)(b) alleged that Lt. Zelikov subsequently placed his knee down onto the side of his head and pressed it into the ground so hard that he experienced severe head pain and an already loose right tooth was cracked. § 87(2)(b) believed that he may have swallowed the tooth at some point thereafter. Medical records showed that when he was admitted to the hospital, § 87(2)(b) did not complain of any injury or pain to his head, which was found to be atraumatic upon examination. Similarly, there is no mention of any alleged or observed tooth damage or mouth pain.

Having recorded the incident, § 87(2)(b) stated that he observed the struggle but did not observe any officer punch § 87(2)(b) in the face or head. This portion of the incident is captured at <00:16>. However, because the camera is positioned directly behind PO Moylan, § 87(2)(b)'s upper body, arms, and head are not visible, nor are any distinct punches. Instead, the footage shows PO Moylan making at least two separate downward motions with his arms and torso. Separately, the footage shows at <00:53> that Lt. Zelikov did place his knee down onto § 87(2)(b)'s head, during which § 87(2)(b) falls silent. However, the result of this action to § 87(2)(b)'s body is not visible. The footage shows § 87(2)(b) displaying some level of resistance throughout the interaction.

PO Moylan denied punching § 87(2)(b) on any part of his body, including his face or head, and maintained that the downward motions shown on video were his attempts to grab § 87(2)(b)'s flailing arms. Lt. Zelikov corroborated this version of events, and both officers maintained that § 87(2)(b) continued to actively resist throughout the process by jostling his body, flailing his arms, and refusing to allow PO Moylan to place his hands behind his back. Separately, despite seeing the video footage, Lt. Zelikov denied placing his knee onto § 87(2)(b)'s head and instead argued that he placed held his head only with his hand. Regardless, he maintained that the pressure applied was enough only to stabilize him and prevent injury that could have resulted from his jostling.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F—Discourtesy: Lt. Vitaliy Zelikov spoke discourteously to individuals.

Although it was not alleged, the video footage shows at <00:25> that as he approached the struggle on the ground, he told members of the crowd off-camera to “get the fuck back.” Lt. Zelikov did not recall specifically making this statement but acknowledged that he could have used profanity. When shown the footage and asked whether he made the statement, he stated that the audio was not clear but that it was possible. As discussed above, Lt. Zelikov has a history of using the word “fuck” while interacting with civilians and has specifically used the same phrase or slight variations multiple times in the past.

Officers are required to speak courteously and respectfully to civilians. Patrol Guide Procedure 203-09 (see Board Review #19).

§ 87(2)(g)

Allegation H—Force: PO Michael Vitale used physical force against § 87(2)(b)

In his initial complaint, § 87(2)(b) made no mention of ever being struck on the leg. However, during his sworn statement, he alleged that as he was being placed into the van, PO Moylan punched him on the back of his right leg from behind. Although PO Moylan acknowledged escorting § 87(2)(b) to the van, PO Vitale stated that, in fact, he was the officer who assisted § 87(2)(b) into the van, which is corroborated by the video footage. Given these circumstances, this allegation is pleaded against PO Vitale.

§ 87(2)(b) who was filming from the opposite side of the van, did not witness any officer punch § 87(2)(b) in the leg. PO Vitale denied ever striking § 87(2)(b) on any part of his body and stated that there was no physical altercation or resistance of any kind while placing him into the

van. Similarly, PO Moylan denied any altercation and did not witness PO Vitale strike § 87(2)(b) on any part of his body. Although this portion of the incident is captured at <02:32> on the video footage, it does not clearly show the specifics of the interaction because it is positioned on the opposite side of the van.

§ 87(2)(b), § 87(2)(g)

Squad: _____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date